



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

SALES—FAILURE OF TITLE.—Defendants sold a mule to plaintiff, with implied warranty of title. At this time there was an outstanding mortgage on the mule, which was unknown to either of the parties. Later the mortgagee foreclosed, the mule being taken from the plaintiff and sold. At that sale the defendants bought the mule and tendered it back to plaintiff with damages for the loss of its services. The plaintiff refused to take the mule and brought suit on the warranty. *Held*, that by the tender of the mule, the defendants had complied with their warranty. *Lee, et al. v. Woods*, (1914 Ky.) 171 S. W. 389.

An implied warranty of title on the sale of chattels is a warranty of the whole title and protects against outstanding liens and encumbrances. *Close v. Crossland*, 47 Minn. 500, 50 N. W. 694; *Hodges v. Wilkinson*, 111 N. C. 56, 15 S. E. 941, 17 L. R. A. 545; *Western v. Short*, 12 B. Mon. (Ky.) 153. In the instant case, although there was a technical breach when the sale was made (*Perkins v. Whelan*, 116 Mass. 542; *Mathany v. Mason*, 73 Mo. 677; *Chancellor v. Wiggins*, 4 B. Mon. (Ky.) 201), yet there was no damage until the plaintiff was deprived of possession. *Barnum v. Cochrane*, 143 Cal. 642; *Close v. Crossland*, 47 Minn. 500; *Linton v. Porter*, 31 Ill. 107. Even when deprived of possession the vendee's recovery is limited to his actual damage. *Close v. Crossland*, 47 Minn. 500; *Sargent v. Currier*, 49 N. H. 310. In the instant case the plaintiff's only damage was the loss of the services of the mule, and defendants had tendered this amount.

SALE—IMPOSSIBILITY OF PERFORMANCE.—Plaintiff sold to defendant a fire-proof safe, upon condition that title should remain in the vendor until payment of the purchase price. Vendee gave vendor his promissory notes as evidence of the debt, and took possession of the safe. Before the notes were paid, the safe was destroyed without the fault of either party. Vendor brought suit on the notes. *Held*, that the loss followed the title, and as title had not passed plaintiff must stand the loss. *Waltz v. Silveira*, (Cal. App. 1914) 145 Pac. 169.

This court holds that the loss follows the title, and therefore in conditional sales the vendor must stand the loss. This is in conflict with the weight of authority and what seems to be the more reasonable view. *Burnley v. Tufts*, 66 Miss. 49, 14 Am. St. Rep. 540; *Tufts v. Griffin*, 107 N. C. 47, 12 S. E. 68; *Chicago Equipment Co. v. Merchants' Bank*, 136 U. S. 268, 34 L. ed. 349. See also WILLISTON, SALES, 304. The time for payment often extends over many months, and even years. It must be expected by the parties that the goods will deteriorate during this period, and nevertheless that the buyer will be bound to pay the price. It would seem properly to follow that if the goods are accidentally destroyed or injured, the buyer must stand the loss, that is, he must pay the price in full at the time agreed. Still there are many cases which lay down the rule of the instant case. *Bishop v. Minderhout*, 128 Ala. 162, 86 Am. St. Rep. 134; *Whigham, et al. v. Hall & Co.*, 8 Ga. App. 509; *McKinney, et al. v. Battle Bros.*, 13 Ga. App. 255; *Cobb v. Tufts*, 2 Tex. App. 152. Some of the cases which seem to be in accord with this